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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 DAVID LARRY PEKKALA,

12 Petitioner,

13 v.

14 MAGGIE MILLER STOUT,

15 Respondent.

Case No. C10-5207BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

16 This matter comes before the Court on the Report and Recommendation (“R&R”) of
17 the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 22), and Petitioner
18 David Larry Pekkala’s (“Pekkala”) objections to the R&R (Dkt. 26).

19 On April 30, 2010, Pekkala filed a petition for writ of habeas corpus raising four
20 grounds for relief. Dkt. 5. On May 3, 2011, Judge Creatura issued an R&R recommending
21 that the Court deny Pekkala’s first three grounds for relief on the merits and the fourth
22 ground for relief because it is procedurally barred. Dkt. 22. On July 5, 2011, Pekkala filed
23 objections to the R&R raising an objection to each of Judge Creatura’s recommendations.
24 Dkt. 26.

25 With regard to Pekkala’s first, second, and third grounds for relief, Judge Creatura
26 found that Pekkala has failed to meet the standards of 28 U.S.C. § 2254(d). Dkt. 22 at 9-13.
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1 Although Pekkala objects to these findings, Pekkala fails to offer any argument on the issue
2 of whether the state court decisions “resulted in a decision that was contrary to, or involved
3 an unreasonable application of, clearly established federal law, as determined by the
4 Supreme Court.” 28 U.S.C. § 2254(d)(1). Pekkala’s objections are essentially arguments
5 that were presented to and addressed by Judge Creatura. Therefore, the Court adopts the
6 R&R on Pekkala’s first, second, and third grounds for relief.


7 With regard to Pekkala’s fourth ground for relief, Judge Creatura found that the
8 ground was raised for the first time in this petition. Dkt. 22 at 12. Judge Creatura also
9 found that the ground was unexhausted and procedurally barred. *Id.* at 12-13. Pekkala
10 objects and argues that this ground for relief was in fact presented to the Supreme Court of
11 the State of Washington. Dkt. 26 at 1. The Court has independently reviewed Pekkala’s
12 Petition for Review (Dkt. 18, Exh. 17), and finds that Pekkala’s contention that the ground
13 for relief was presented to the state court is without merit. Therefore, the Court adopts the
14 R&R on Pekkala’s fourth ground for relief.

15 Finally, a petitioner seeking relief under 28 U.S.C. § 2254 may appeal a district
16 court’s dismissal of his federal habeas petition only after obtaining a certificate of
17 appealability (“COA”) from a district or circuit judge. A certificate of appealability may
18 issue only where a petitioner has made “a substantial showing of the denial of a
19 constitutional right.” See 28 U.S.C. § 2253(c) (3). A petitioner satisfies this standard “by
20 demonstrating that jurists of reason could disagree with the district court’s resolution of his
21 constitutional claims or that jurists could conclude the issues presented are adequate to
22 deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).
23 Under this standard, the Court concludes that Pekkala is not entitled to a certificate of
24 appealability with respect to this petition.

25 The Court having considered the R&R, Pekkala’s objections, and the remaining
26 record, does hereby find and order as follows:

- 1 (1) The R&R is **ADOPTED**;
2 (2) A Certificate of Appealability is **DENIED**; and
3 (3) This action is **DISMISSED**.

4 DATED this 10th day of August, 2011.

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7 BENJAMIN H. SETTLE
8 United States District Judge
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